

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

15 Before the court is Plaintiff's Emergency Motion to Reconsider (Doc # 56). (Doc. # 57.)¹ Plaintiff
16 seeks the court to reconsider the component of its order regarding a discovery dispute. The court's order
17 required Defendants to produce copies of photographs taken of Plaintiff's wife. However, the court also
18 ordered that Defendants should produce these photographs to the warden of Northern Nevada
19 Correctional Center (NNCC) and Plaintiff should "kite" the warden's office to inspect them. (Doc. # 56
20 at 3.) Plaintiff's motion argues he should be entitled to have the photographs in his cell. For the reasons
21 stated in this Order, Plaintiff's motion is denied.

I. STANDARDS RELATING TO EMERGENCY MOTIONS

23 Local Rule 7-5 pertains to emergency motions. Any motion characterized as "emergency" in
24 nature must be accompanied by an affidavit which sets forth:

- (1) The nature of the emergency;
 - (2) The addresses and telephone numbers of movant and affected parties; and,
 - (3) A statement of movant certifying that, after personal consultation and sincere effort to do so, movant has been unable to resolve the matter without Court action. The statement also must state when

¹ Refers to court's docket number.

1 and how the other affected party was notified of the motion or, if
 2 the other party was not notified, why it was not practicable to do so.
 3 If the nature of the emergency precludes such consultation with the
 4 other party, the statement shall include a detailed description of the
 emergency, so that the Court can evaluate whether consultation
 truly was precluded. It shall be within the sole discretion of the
 Court to determine whether any such matter is, in fact, an
 emergency.

5 Local Rule 7-5.

6 Plaintiff states that the emergency motion should be granted to avoid "manifest injustice." (Doc.
 7 # 57.) However, not only has Plaintiff failed to characterize the "emergency" which is supposedly
 8 presented by the court's order, he has not demonstrated any "manifest injustice" which might result from
 9 this court's Order. Merely because this court has ordered Plaintiff is to review the photographs in the
 10 warden's office, and because his inmate assistant might not personally be also able to view them (Doc.
 11 # 57 at 2-3), does not create any injustice, let alone manifest injustice.

12 II. DISCUSSION

13 As Defendants argued in their opposition to Plaintiff's underlying motion, the relevancy of the
 14 photographs of Plaintiff's wife is remote at best in any event. (Doc. # 48 at 3.) The Plaintiff's civil rights
 15 action is based upon excessive force supposedly inflicted on Plaintiff when officers came to his
 16 residence to investigate an alleged spousal battery. (Screening Order, Doc. # 3; amended Complaint,
 17 Doc. # 6.) Plaintiff's allegations against Defendants are predicated upon claims of "unnecessary and
 18 excessive use of force" and "assault and battery." (Doc. # 6 at 2.) Plaintiff alleges his grandson called
 19 the sheriff's department as a result of a "domestic argument" between Plaintiff and his wife. (*Id.* at 4.)
 20 Although Plaintiff characterizes the argument with his wife as being "non-violent," whether it was or
 21 was not is not particularly relevant to an allegation of use of excessive force. It was a close question to
 22 begin with whether the photographs were even relevant to Plaintiff's claims, and whether Plaintiff should
 23 even have access to those photographs. The court decided to err on the side of having this evidence
 24 produced. However, that Plaintiff may have to inspect the photographs in the warden's office does not
 25 work an injustice on Plaintiff. This requirement presents no more of a burden on Plaintiff than does
 26 adherence to Nevada Department of Corrections (NDOC) regulations an inmate may not possess his
 27 medical records in his cell and the inmate must "kite" to review them. NDOC Administrative Regulation
 28 639.02(8).

III. CONCLUSION

A motion to reconsider must set forth "some valid reason why the court should reconsider its prior decision" and set "forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision." *Frasure v. United States*, 256 F.Supp.2d 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this court "(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law."

Sh. Dist. No. IJ v. Acands, Inc., 5 F.3d. 1255, 1263 (9th Cir. 1993). "A motion for reconsideration is not an avenue to re-litigate the same issues and arguments upon which the court already has ruled. *Brown v. Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005).

Plaintiff has not demonstrated any valid reason the court should reconsider its prior order. The court's decision was clearly not erroneous nor was it manifestly unjust.

12 Plaintiff's motion (Doc. # 57) is **DENIED**.

13 || IT IS SO ORDERED.

14 || DATED: June 9, 2014.

Walter J. Cobb

**WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE**